

FILED

JUN 19 2006

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

GURMINDER SINGH,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-75301

Agency No. A70-817-750

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted June 12, 2006^{**}

Before: WALLACE, KLEINFELD, and BERZON, Circuit Judges.

Gurminder Singh, a native and citizen of India, petitions for review of the Board of Immigration Appeals' order summarily affirming an immigration judge's ("IJ") order denying his motion to reopen deportation proceedings conducted in

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

absentia. We have jurisdiction under 8 U.S.C. § 1252. We review for abuse of discretion the denial of a motion to reopen. *Iturribarria v. INS*, 321 F.3d 889, 894 (9th Cir. 2003). We deny the petition for review.

The IJ did not abuse her discretion in declining to toll the limitations period for filing a motion to reopen because Singh did not demonstrate he acted with due diligence in waiting over seven years to seek reopening on the ground that he got stuck in traffic on the way to his merits hearing. *See Socop-Gonzales v. INS*, 272 F.3d 1176, 1193 (9th Cir. 2001) (en banc); *Iturribarria*, 321 F.3d at 899 (noting that due diligence is required to trigger equitable tolling).

Because Singh's motion to reopen was untimely, we do not consider his claim that exceptional circumstances beyond his control excused his failure to appear. *See* 8 U.S.C. § 1229a(b)(5)(C) (requiring a motion to reopen based on exceptional circumstances to be filed within 180 days after the removal order).

PETITION FOR REVIEW DENIED.